IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 937 of 2001

in

SPECIAL CIVIL APPLICATIONNo 5481 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

GENAJI DINAJI PRAJAPATI

Versus

AMC, THROUGH MUNICIPAL COMMISSIONER

Appearance:

1. LETTERS PATENT APPEAL No. 937 of 2001

MR BR GUPTA for Appellant

..... for Respondent No. 1-4

CORAM : MR.JUSTICE A.R.DAVE

and

MR.JUSTICE D.P.BUCH

Date of decision: 12/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

The judgment dated 20.7.2001 delivered in Special Civil Application No.5481/2000 has been challenged in this appeal.

2. Appellant is the original petitioner who was aggrieved by a notice given by the respondent-Ahmedabad Municipal Corporation (for short, 'the Corporation') under the provisions of Section 68 of the Gujarat Town Planning and Urban Development Act, 1976. It is not in dispute that the petitioner had made an encroachment on final plot No.173 of Town Planning Scheme Odhav No.1 (final). In pursuance of the notice referred to hereinabove, the appellant was sought to be removed, and therefore, the appellant, by way of the above stated petition had approached this court. The learned Single Judge has rejected the petition and being aggrieved by the said rejection, the appellant has approached this court by way of this appeal.

3. Learned Advocate Mr B R Gupta appearing for the appellant has submitted that for the last 32 years, the appellant is occuping the land in question. Of course, he could not adduce any evidence to show tht he had any right to occupy the land in question. He has admitted the fact that the appellant had made an encroachment on the land in question. It has been submitted by him that before removing the appellant from the land in question, he should be given some alternative place where he can do his business and can also reside. It has also been submitted that possession of the land in question should not be taken from the appellant till the land in question is actually required by the Corporation. It has further been submitted by him that the learned Single Judge should not have directed that the decision made on the representation that may be made by the petitioner shall be final and binding upon the appellant.

4. In our opinion, the learned Single Judge has not committed any error while rejecting the petition. Even if the appellant is occupying the land in question for 30 years or more, it would not give any right or title to the appellant to retain possession of the land in question for ever. As stated hereinabove, it is not in

dispute that the appellant is an encroacher and, therefore, he has to be removed. It appears from what has been submitted by the learned Advocate that the land in question has to be used for the purpose of construction of a Shopping Centre. Unless the encroachment is removed, it would be difficult for the respondent-Corporation to dispose of the land in favour of someone who can put up the construction of a Shopping Centre and, therefore, the respondent Corporation cannot be directed to permit the appellant to retain possession of the land in question till the land is actually put to use. The learned Single Judge has shown some sympathy towards the appellant by protecting possession of the appellant till a representation which might be made by the appellant is decided by the respondent Corporation. By showing the sympathy, the learned Single Judge was conscious of the fact that no unwarranted litigation should be initiated if the representation is turned down because it is an admitted facat that the appellant has no legal or fundamental right to continue to occupy the land in question which admittedly belongs to the respondent Corporation. In the circumstances, we do not find any substance in the appeal and the appeal is dismissed with no order as tao costs.

12.9.2001 [A R Dave, J.]

[D P Buch, J.]
msp